

REMARKS

Claims 1-8 were presented for examination. Claims 1-5 and 7 were rejected as being anticipated by Ognier. Claims 6 and 8 were rejected as being obvious over Ognier in view of Schectman. Claims 1-8 have been canceled without prejudice, and new Claims 11-16 have been added.

We would like to comment on the grounds for the final rejection below.

In the anticipation rejection, the Examiner has incorrectly labeled the components of Ognier in attempting to compare them to the limitations in the claims in question. The following statements made by the Examiner in the rejection are incorrect:

- a) 105b of Ognier is a swiveling and rotatable seat for the accessory instruments. According to the reference, 105b is a distal segment of the rigid arm 105 which segment is connected to a proximal segment 105a of the arm 105. Support for the instrument 4 is provided by a ball 103 which is mounted on the distal segment 105b of the arm 105.
- b) The assembly of Ognier is operative to prevent body cavity wall rupture during orientation of the instrument in the body cavity. This statement is completely unsupported by the Ognier reference.
- c) The elasticity of the mechanical arm 105 is controlled by the material that the mechanical arm is formed from. The mechanical arm segments are formed from a rigid material, not an elastic material.
- d) The elasticity of the mechanical arm is the result of swiveling joints(108, 108a) formed in the mechanical arm. In actuality, the joints render the arm flexible, but not elastic. It is also noted that the joints 108 and 108a are locked up once the arm is properly positioned. The locking mechanisms are rings 25 and 36 which are selectively pressed against the ball joints 108a and 108 selectively (see Figs. 3 and 5). Once the ball joints are locked up, the arm is no longer flexible, it is rigid. It never was "elastic", as claimed in the instant claims.
- e) The swiveling joints 108 and 108a are biased by torsion springs 40c (Fig. 5). The spring that the Examiner refers to as numeral 40c is not a torsion spring. It is a compression spring that serves as a piston return spring for the piston 40. It biases the piston 40 away from the secondary piston 50. We trust that the Examiner knows what a torsion spring is. A watch spring is an example of a torsion spring. A piston return spring is not an example of a torsion spring.

We have pointed out five different Examiner mischaracterizations of what the Ognier patent actually discloses, which mischaracterizations are put forth in the grounds for the §102 rejections.

Regarding the §103 rejections, the Examiner characterizes Schectman as disclosing "a surgical device". The only utility of the flexible actuating screw described in Schectman is use as an artificial hand prosthesis which can be used to emulate the metacarpals of the human hand. A mechanical artificial hand is not a "a surgical device"!

In the Response to Arguments section of the final rejection, the Examiner admits that Schectman is not in the field of applicant's endeavor, but states that Schectman is reasonably pertinent to the particular problem with which the applicant was concerned (citing In re Oetiker). The Examiner goes on to characterize the problem with which the applicant was concerned was "providing a flexible joint". The actual problem that applicant was concerned with is preventing body cavity wall rupture during manipulation of a surgical instrument, not simply providing a flexible joint. The opinion in In re Oetiker, at pp 1446, makes it quite clear that the PTO must use common sense in deciding in which fields a person of ordinary skill would reasonably be expected to look for a solution to the problem facing the inventor. What the Examiner is alleging here is that one of ordinary skill in the art of surgical instrument manipulation when faced with the problem of devising a system that would avoid body cavity wall rupture during manipulation of the surgical instrument would be reasonable expected to look to the field of mechanical artificial hand assemblies for a solution to that problem. We submit that this is clearly not the case.

Regarding Claim 8, the Examiner states that the ball joints in Ognier are known to be rotatable about 360 degrees which means that they are inherently capable of a degree of operative motion to a cone angle of no more than 35 degrees. It would be an "obvious mechanical expedient" to have restricted the movement of the mechanical arm to a cone of no more than 35 degrees "for the purpose intended". Since the Examiner is relying solely on Ognier here, Ognier must have provided a motivation for using this so called "obvious mechanical expedient" to produce "the purpose intended". That is the law. Where is this necessary motivation in Ognier? The Examiner should take a look at Fig. 1 of Ognier, where there is shown a rotation of the ball joint 108a of 45 degrees. Quite obviously, the ball joint 108a could have been rotated even further through an angle of 90 degrees. We invite the Examiner to check this out with a protractor. The ball joint 103 can also be rotated through an angle of 90 degrees. There is nothing in Ognier to suggest the desirability of limiting the movement of the arm components or the surgical instrument to a cone of no more than 35 degrees.

Respectfully submitted,



William W. Jones
Attorney for Applicant
Reg. No. 24,607
6 Juniper Lane
Madison, CT 06443
(203) 245-2418

Date 6-21-06

I hereby certify that this correspondence is being deposited
with the United States Postal Service as first class mail
in an envelope addressed to Commissioner for Patents,
P.O. Box 1450, Alexandria, VA. 22313-1450, on

6-22-06


Signature

6-22-06
Date

Listing of the Claims

1-10 (canceled)

11.(new) A holding and positioning assembly for securing surgical accessory instruments in place during surgery, said assembly comprising a swiveling and rotatable seat for the accessory instruments, said seat including means for gripping the instruments and said seat being connected to an elastic mechanical arm, said elastic mechanical arm being sufficiently resilient so as to bend before the tensile strength of the tissue of a surgical patient is reached during maneuvering of the mechanical arm and seat during surgery.

12.(new) The assembly of Claim 11 wherein said mechanical arm is a coil spring.

13.(new) A holding and positioning assembly for securing surgical accessory instruments in place during surgery, said assembly comprising a swiveling and rotatable seat for the accessory instruments, said seat including means for gripping the instruments and said seat being linked to a mechanical arm via a multi-directionally movable joint mechanism, said mechanical arm being formed from a series of rectilinear components with each of said rectilinear components being connected to an adjacent rectilinear component by resilient connectors which are sufficiently resilient so as to bend before the tensile strength of the tissue of a surgical patient is reached during maneuvering of the mechanical arm and seat during surgery.

14.(new) The assembly of Claim 13 wherein said resilient connectors are torsion springs.

15.(new) The assembly of Claim 13 wherein said resilient connectors are formed from an elastomeric material.

16.(new) A holding and positioning assembly for securing surgical accessory instruments in place during surgery, said assembly comprising a swiveling and rotatable seat for the accessory instruments, said seat including means for gripping the instruments and said seat being linked to a mechanical arm via a multi-directionally movable joint mechanism, said mechanical arm being manually movable during surgery to alter the position of said seat in said assembly, wherein movement of said mechanical arm and seat is restricted to a cone having an included angle of no more than about 35°.